



MISSOURI ETHICS COMMISSION

P.O. Box 1254

Jefferson City, MO 65102

www.mec.mo.gov

(573) 751-2020 / (800) 392-8660

Julie A. Allen

Executive Director

March 11, 2010

Opinion No. 2010.03.CI.003

At the March 11, 2010 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

Would a conflict of interest exist for a Building Inspector/Code Enforcement/Zoning Administrator for a 4th Class City to perform private commercial mowing services to clients within the corporate city limits of the community in which he serves? The Position of Building Inspector/Code Enforcement/Zoning Administrator is not classified as one within Administrative Executive Capacity, and is appointed by the Mayor with the approval of the Board of Aldermen.

In general, the conflict of interest statutes which should be considered can be found in §105.450 through §105.456, RSMo, and §105.461, RSMo. From the information you have provided, it does not appear that §105.454, RSMo applies to your position as your position is not classified as administrative or executive as required by the statute. See Opinion No. 1999.09.110. Because your position is appointed, §105.452, RSMo should be consulted since it applies to appointed public employees in general.

That statute in pertinent part provides:

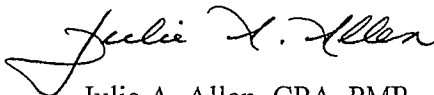
1. No elected or appointed official or employee of the state or any political subdivision thereof shall:

(1) Act or refrain from acting in any capacity in which he is lawfully empowered to act as such an official or employee by reason of any payment, offer to pay, promise to pay, or receipt of anything of actual pecuniary value paid or payable, or received or receivable, to himself or any third person, including any gift or campaign contribution, made or received in relationship to or as a condition of the performance of an official act, other than compensation to be paid by the state or political subdivision; or

- (2) Use confidential information obtained in the course of or by reason of his employment or official capacity in any manner with intent to result in financial gain for himself, his spouse, his dependent child in his custody, or any business with which he is associated;
- (3) Disclose confidential information obtained in the course of or by reason of his employment or official capacity in any manner with intent to result in financial gain for himself or any other person;
- (4) Favorably act on any matter that is so specifically designed so as to provide a special monetary benefit to such official or his spouse or dependent children, including but not limited to increases in retirement benefits, whether received from the state of Missouri or any third party by reason of such act. For the purposes of this subdivision, "special monetary benefit" means being materially affected in a substantially different manner or degree than the manner or degree in which the public in general will be affected or, if the matter affects only a special class of persons, then affected in a substantially different manner or degree than the manner or degree in which such class will be affected. In all such matters such officials must recuse themselves from acting, except that such official may act on increases in compensation subject to the restrictions of section 13 of article VII of the Missouri Constitution; or
- (5) Use his decision-making authority for the purpose of obtaining a financial gain which materially enriches himself, his spouse or dependent children by acting or refraining from acting for the purpose of coercing or extorting from another anything of actual pecuniary value.

As stated in Opinion No. 2007.02.CI.001-1, the Commission encourages you to recognize that you should not use your position for private gain. You should also consult with your superiors, and any department policy or procedure in addition to the state statutes.

Sincerely,



Julie A. Allen, CPA, PMP
Executive Director

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